

## Fixing FISA and Protecting Civil Liberties

Many of you have contacted me and asked me why I voted for the FISA Amendments Act (H.R. 6304). I appreciate hearing from you and welcome this opportunity to respond.

I certainly understand your frustrations and concerns. I strongly believe the rights and liberties guaranteed to every American in the Constitution are not optional. In fact, I voted against an earlier version of this bill, the Protect America Act, because I did not believe that it adequately addressed privacy concerns or protected civil liberties. However, I voted for this new FISA legislation because it takes important steps forward in protecting us all from the very real threats of terrorism in the 21st century, but not at the expense of our civil liberties.

H.R. 6304 provides bright line rules that will prevent the sort of abuses committed by the Bush Administration in the past. Contrary to the assertions of some, this legislation does not "take away" constitutional rights or authorize warrantless wiretapping of American citizens. In fact, the legislation does just the reverse. This legislation explicitly requires, for the first time ever, that a warrant is required to initiate surveillance on any American anywhere in the world, not simply in the United States. Furthermore, this bill requires the government to establish clear guidelines to ensure that no American is the target of any surveillance without a warrant. It is true that there are reasonable provisions to allow, in rare emergencies, immediate surveillance of an American citizen located outside of the United States, but the surveillance must then be approved by the FISA court within seven days. Further, if the FISA court deems the initial surveillance to have been unjustified, none of the information or evidence collected can be used in proceedings against the individual. This point is made explicitly in the law.

It is also important to recognize that the legislation requires that specific procedures be established to prevent any inadvertent targeting of Americans. What is more, the bill is explicit that these guidelines must be reviewed by the Intelligence and Judiciary committees of the House and Senate. This too marks a substantial improvement from prior procedures.

Another concern some people have raised has to do with so called "blanket immunity" for telecommunications companies which may have allowed access to information at the request of the Administration. Unlike the previous Senate version, and contrary to claims of some critics of this bill, this legislation does not grant blanket immunity to telecommunications companies. The fact is this legislation allows a federal district court to review the evidence and decide whether a lawsuit against a telecommunication company should proceed. A key point to understand is that, under existing law, telecommunication companies already had immunity if they provided the contents of telecommunications after receiving a written certification from the Administration that no warrant or court order was required by

law, that all statutory requirements have been met, and that the specified assistance is required. Under the legislation just passed, a district court can grant a telecommunications company civil liability protection only if it reviews the evidence and is satisfied that the company received a written request or directive from the Administration indicating that the activity was authorized by the President and determined to be lawful by the Administration. In passing this bill, Congress has not decided the question of immunity; this determination will be made only by a court.

It is also tremendously important to recognize that this legislation explicitly prohibits this or any future President from claiming, as President Bush has, that the authority to use force against the perpetrators of the September 11th attacks gave him the authority to initiate wiretaps on Americans without warrants. This legislation makes clear that such claims are invalid and that similar claims of such authority will also be invalid.

Finally, this FISA legislation includes a key sunset provision. Four and a half years from now, this issue will be revisited to ensure H.R. 6304 is effective and that the civil liberties of Americans are being adequately protected.

Like you, I believe H.R. 6304 is not perfect. But, I believe it succeeds in making FISA better than it was, better than the Republican alternative, and certainly better than the status quo. If you are interested in reading the legislation yourself, it can be found at <http://thomas.loc.gov>

I receive thousands of letters and emails every week, but sincerely appreciate you taking the time to contact me. Please be assured that I do take note of your concerns, and will keep your thoughts in mind as I continue to represent Southwest Washington.

All the best,

Brian

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